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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 4051 of 2004
Date of decision: 17.12.2007

Om Parkash and others

...Appellants

Versus

Nihali and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

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Present: Mr. Arun Jain, Advocate with
Mr. Amit Jain, Advocate for the appellants.

Mr. Aman Priye Jain, Advocate for the respondents.

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RAJESH BINDAL, J.

The plaintiffs are in second appeal before this Court against concurrent findings of fact by both the Courts below whereby suit filed by them for declaration regarding the inheritance of property owned by Smt. Mamo widow of Sahi Ram was dismissed.

As per pleadings, Kishan Lal had four sons, namely, Matu, Sahi Ram, Ram Datt and Mai Ram. The dispute revolves around the property of Sahi Ram, who was survived by his widow Mamo and daughter-in-law Sheela (widow of predeceased son Diwana @ Badhau) and grand daughter Nihali. After the death of Diwana his property was inherited by his mother Mamo and widow Sheela in equal share. There is no dispute with regard to share inherited by his widow Sheela, who disposed of her share. The dispute pertains to the property inherited by his mother Mamo.

The claim set up by the appellants/plaintiffs in a suit filed on

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April 29, 1998, to challenge inheritance of property in favour of Nihali, was on the ground that infact Nihali was daughter of Sheela from the lions of Jagminder as she was born much after the death of Diwana. It was claimed that Sheela performed a Kareva Marriage with Jagminder and accordingly she being not a part of the family was not entitled to inherit the property of Mamo. However, this claim made by the appellants/plaintiffs was not found worth acceptance by both the Courts below. Besides this even it was found that the suit was otherwise also liable to be dismissed on account of same being barred by limitation. Both the Courts below did not find any substance in the evidence led by the appellants/plaintiffs and accordingly dismissed the claim made by them.

Learned counsel for the appellants/plaintiffs submitted that Diwana died on April 14, 1969 and Nihali was born nearly after 2-1/2 years of his death from the lions of Jagminder with whom Sheela had performed Kareva marriage. This is fortified from the fact that at the time of sanction of mutation of inheritance of the property of Diwana entered on November 21, 1969, her name was not mentioned. Once Nihali was not the daughter of deceased Diwana, she was not entitled to inherit the property of Mamo. The appellants have further relied upon a birth certificate showing the date of birth of Nihali as July 2, 1971. On the other hand learned counsel for the respondents vehemently opposed the contentions raised by learned counsel for the appellants and submitted that findings recorded by both the Courts below are plain and simple findings of fact, which do not give rise to any question of law much less a substantial question of law. He further submitted that firstly there was no Kareva marriage with Jagminder as alleged by the appellants as admittedly he was more than 50 years older to Sheela with whom alleged Kareva marriage was alleged. In fact children of Jagminder were even older than Sheela. Even otherwise Jagminder was not part of the family. Still further it is submitted that custom of Kareva marriage was only prevalent in Jats whereas the parties to the suit are Brahamans and no reliance could be placed thereon. Still further it is submitted that the appellants had knowledge about the death of Mamo which occurred in the year 1982 whereas the present suit was filed only in

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the year 1998.

After hearing learned counsel for the parties, I do not find any substance in the contentions raised by learned counsel for the appellants/plaintiffs.

The contention of learned counsel for the appellants to the effect that Sheela performed Kareva marriage with Jagminder has no legs to stand in the wake of evidence on record to the effect that he was 50 years older to her and further he was not related to the family in any manner. Further he was already married and having children even older in age as compared to Sheela. Still further it is not proved on record as to whether the custom of Kareva marriage was prevalent in Brahamans to which the parties belonged. As far as birth certificate is concerned, it was found that in the same Nihali was shown to be daughter of Budha and not Jagminder. It has further come on record that after the death of Jagminder, his inheritance was sanctioned in favour of his sons and daughters. There is no mention of Nihali or Sheela Wanti in the pedigree table noticed at the time of sanction of mutation.

The plea set up by Sheela Wanti to the effect that at the time of sanction of mutation on the death Diwana, Nihali was in womb could not be disbelieved as she stated that she was born about six months after the death of Diwana. The mutation in the present case was sanctioned on November 21, 1969 for which application must have been made prior thereto and at the time of recording of evidence after more than three decades minor discrepancies could not be ruled out.

In the suit filed in 1998, challenge is to the mutation entered on July 2, 1979 and sanctioned on August 21, 1982. The same was righly held to be time barred by both the Courts below. It had come on record that prior to filing of the present suit in the year 1998, an earlier suit was filed by Chhabila son of Mai Ram, one of the brother of Sahi Ram against Sheela Wanti and Nihali challenging the mutation of inheritance of Mamu in their favour and in that suit Tek Chand father of the present appellant was also party. It was admitted by Om Parkash plaintiff that their father Tek Chand used to pursue that case and that case was dismissed as withdrawn on

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January 23, 1982, which clearly established that they were in knowledge of the mutation sanctioned in favour of Nihali way back in 1982 but still kept quite. It is also not in dispute that Nihali all along had been in possession of the land. The findings by the Courts below are plain and simple findings of fact recorded on appreciation of evidence.

No substantial question of law arises in the present appeal and the same is, accordingly, dismissed

December 17 , 2007 **(Rajesh Bindal)**
Pka **Judge**